

Memorandum



Date: June 5, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 14(B)1

From: George M. Burges
County Manager

Subject: Report on Status of Litigation Regarding April 2005-2006 Cycle Applications to Amend the Comprehensive Development Master Plan

On April 19, 2006, the Board adopted Ordinances No. 06-42 and No. 06-43, taking final action on the April 2005-2006 Cycle applications to amend the Miami-Dade County Comprehensive Development Master Plan (CDMP) (the 06-1 Amendment). A summary of the relevant applications is attached as Exhibit A. Of these applications, Application No. 5, which had been filed by the City of Hialeah, was the only one that extended the Urban Development Boundary (UDB) on the County's Land Use Plan Map (LUP). The other 8 applications concerned changes to the LUP for infill properties. These adopted applications were transmitted, as required under state law, to the Department of Community Affairs (DCA) and other state and regional review agencies for a final determination of compliance with state growth management laws and rules. On June 22, 2006, DCA issued a Notice of Intent to find the adopted changes to the LUP "not in compliance" with state law. The principal objection was that the County does not have an adequate water supply to serve the subject properties. Additionally, DCA found that Application No. 5 failed to adequately address potential traffic issues. As the state growth management laws require, DCA then referred the 06-1 Amendment to the Division of Administrative Hearings (DOAH) to conduct an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. That administrative litigation remains pending and is the subject of this report.

The Town of Miami Lakes intervened in the administrative litigation, opposing the 06-1 Amendment and adopting all of DCA's objections. The City of Hialeah and the applicants of the 8 infill applications intervened in the litigation, in support of the County.

On July 6, 2006, the Board adopted Resolution No. R-847-06, approving a Settlement Agreement between DCA and the County concerning Application No. 5. Pursuant to that Agreement, on August 24, 2006, the Board adopted a Remedial Plan Amendment (Ordinance No. 06-116) to address DCA's objections relating to water supply and traffic as to Application No. 5. DCA thereafter removed its objections to Application No. 5 and issued a Notice of Intent to find both Application No. 5 and the Remedial Plan Amendment "in compliance." That left 8 infill applications to which DCA continued to object, on the ground that the County did not have adequate water supply.

The Town of Miami Lakes did not agree to the settlement between the County and DCA and instead filed an amended petition in the administrative litigation. That amended petition continued to adopt all of DCA's prior objections based on water supply and traffic, in addition to adding further objections to the Remedial Plan Amendment. Accordingly, the Town of Miami Lakes continues to object to Application No. 5, as well as the 8 infill applications, in the administrative litigation.

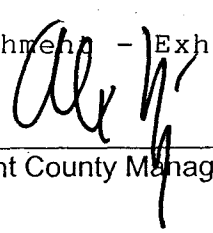
On March 28, 2007, the Board adopted Ordinance No. 07-52, taking final action on the April 2006-2007 Cycle Applications to Amend the CDMP (the 07-1 Amendment). That ordinance added a number of additional water supply facilities and sewer facilities to the Capital Improvements Element of the CDMP, thereby demonstrating that the County will have adequate future water supplies to serve future growth. On May 28, 2007, DCA published its Notice of Intent to find the 07-1 Amendment "in compliance."

Based on the adoption of additional water supply and sewer facilities, DCA has indicated a willingness to resolve its objections to the 8 remaining infill applications in the 06-1 Amendment. That resolution would take the form of a settlement agreement to be presented to this Board pursuant to Section 163.3184(16), Florida Statutes (the same procedure that applied to the settlement agreement concerning Application No. 5). It would require 10 days notice and a public hearing before the Board.

Entering into a settlement agreement with DCA, however, would not resolve the dispute with the Town of Miami Lakes, which has outstanding objections to the entire 06-1 Amendment in the administrative hearing. The Town council had an executive session on May 2, 2007, and has now indicated that it would like to see changes to NW 170 Street that had not been contemplated as part of either Application No. 5 or the Remedial Plan Amendment. However, the Town's exact proposal is unclear at this time, as nothing has been received from the Town council in writing.

The County Attorney's Office will continue to prepare for a final hearing in the administrative litigation, and we will keep the Board apprised of any significant activity in the dispute with the Town of Miami Lakes.

Attachment - Exhibit A



Assistant County Manager

EXHIBIT A

**SUMMARY OF ACTIONS
BY BOARD OF COUNTY COMMISSIONERS ON APRIL 2005-06 CDMP AMENDMENTS
(Ordinance Nos. 06-42 and 06-43; April 19, 2006)**

Application Number	Applicant/Representative Location (Size) REQUESTED CHANGE TO THE CDMP LAND USE PLAN MAP, POLICIES OR TEXT	Final Commission Action
1	46 ACRES, LLC / Mr. Juan J. Mayol, Jr., Esq. Change 26.13 gross acres located on the south side of NE 215 Street approximately 900 feet east of San Simeon Way From: Industrial and Office To: Low-Medium Density Residential (5 to 13 DU/Ac)	Adopt with Acceptance of Proffered Covenant
2	AKOUKA LLC / Stanley B. Price, Esq. and William W. Riley, Esq. Change 2.98 gross acres located on the east side of Memorial Highway at theoretical NE 145 Street From: Low Density Residential (2.5 to 6 DU/Ac) To: Low-Medium Density Residential (5 to 13 DU/Ac)	Adopt
3	Dynamic Biscayne Shores Associates, Inc. / Jeffrey Bercow, Esq. and Michael Larkin, Esq. Change a total of 15.15 gross acres involving 5 parcels located on the west side of Biscayne Boulevard to NE 13 Avenue between NE 112 and NE 115 Streets. (<i>Originally 21.54 gross acres but revised by partial withdrawal requests received August 19, 2005, November 3, 2005 and December 22, 2005, to a total of 15.89 acres.</i>) <i>Parcel A (1.12 acres)</i> From: Low Density Residential (2.5 to 6 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) <i>Parcel B (2.78 acres)</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) <i>Parcel C (1.89 acres)</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) <i>Parcel D (0.0 acres)</i> <i>(Originally 2.97 acres, revised by partial withdrawal request received November 3, 2005 to a total of 1.73 acres and withdrawal request received December 22, 2005, to a total of 0.0 acres)</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) & Business and Office To: Medium Density Residential (13 to 25 DU/Ac) <i>Parcel E (12.78 acres)</i> <i>(Originally 12.78 acres, revised by partial withdrawal request received August 19, 2005 to a total of 10.10 acres)</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) & Business and Office To: Business And Office	Adopt with Acceptance of Proffered Covenant

Application Number	Applicant/Representative Location (Size) REQUESTED CHANGE TO THE CDMP LAND USE PLAN MAP, POLICIES OR TEXT	Final Commission Action
4	<p>Liberty Investment, Inc. / Michael W. Larkin, Esq. and Graham Penn, Esq. Change 27.6 gross acres generally located between NW 12 Avenue and NW 9 Avenue, and between NW 95 Terrace and NW 99 Street</p> <p><i>Parcels A, C, D, & E:</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) and <i>Parcel B:</i> From: Low-Medium Density Residential (5 to 13 DU/Ac) To: Medium-High Density Residential (25 to 60 DU/Ac) <i>(Parcel B was originally "To: Medium-High Density Residential (25 to 60 DU/Ac)" but was revised by letter dated November 18, 2005 to "Medium Density Residential".</i></p>	Adopt with Change and Acceptance of Proffered Covenant
5	<p>City of Hialeah / Augusto E. Maxwell, Esq. Change 1140.8 gross acres located between NW 97 Avenue and the Homestead Extension of the Florida Turnpike (HEFT) and between NW 154 Street and NW 170 Street</p> <ol style="list-style-type: none"> 1) Extend the 2005 Urban Development Boundary (UDB) to encompass the application area 2) Change to "Open Land Subareas" map and related text in the Land Use Element to exclude the subject area. 3) From: Open Land To: Industrial and Office <p><i>(The application site was originally 793.8 gross acres but expanded with an additional change by extending the UDB beyond the northern boundary (NW 170 Street) of Application No. 5 site and westward from the existing UDB line to the Turnpike (HEFT), involving an additional +347 acres with redesignation from Open Land to Industrial and Office, and by adding roadway land changes to LUP map and to Figures 1 and 3 in the Traffic Circulation Subelement at the hearing on November 30, 2005, by the Board)</i></p>	Adopt With Change by adding roadway changes to the LUP map and to Figures 1, 3 and 4 in the Traffic Circulation Subelement as identified in the "CDMP Amendment Application Transportation Analysis" submitted by the applicant at the hearing, and Acceptance of Proffered Covenant for the +347-acre Graham property.
15	<p>Pasadena Capital, Inc. / Stanley B. Price, Esq., Brian S. Adler, Esq. and Alexandra L. Deas, Esq. Change 24.02 gross acres located at the northwest corner of SW 147 Avenue and SW 184 Street, lying southeast of the CSX Railroad ROW. <i>(Originally 24.02 gross acres but revised by partial withdrawal to 10 net acres by letter received October 3, 2005.)</i> From: Low Density Residential (2.5 to 6 DU/Ac) To: Business and Office</p>	Adopt With Change and Acceptance of Proffered Covenant.
20	<p>J. L. Brown Development Corporation / James L. Brown, Sr. Change 3.08 gross acres located at the northwest corner of SW 112 Avenue and SW 216 Street From: Medium Density Residential (13 to 25 DU/Ac) To: Business and Office</p>	Adopt

Application Number	Applicant/Representative Location (Size) REQUESTED CHANGE TO THE CDMP LAND USE PLAN MAP, POLICIES OR TEXT	Final Commission Action
21	Kaza 112 Property Corporation / Wissam Naamani Change 0.91 gross acres located at the southeast corner of SW 112 Avenue and SW 224 Street From: Low Density Residential (2.5 to 6 DU/Ac) To: Business and Office	Adopt With Acceptance of Proffered Covenant
22	Princeton Land Investments, LLC / Jeffrey Bercow, Esq., and Graham Penn, Esq. Change 62.51 gross acres located at the northwest and southeast corners of SW 127 Avenue and SW 240 Street and northeast corner of SW 236 Street and SW127 Avenue <i>Parcel A (38.32 Acres)</i> From: Low Density Residential (2.5 to 6 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) <i>Parcel B (20.19 Acres)</i> From: Low Density Residential (2.5 to 6 DU/Ac) To: Low-Medium Density Residential (5 to 13 DU/Ac) <i>Parcel C (4 Acres)</i> From: Low Density Residential (2.5 to 6 DU/Ac) To: Medium Density Residential (13 to 25 DU/Ac) <i>(The application site was originally 58.51 gross acres comprising Parcels A and B but was expanded at the hearing on November 30, 2005, by the Board to include an additional 4 acres now identified as Parcel C)</i>	Adopt With Change and Acceptance of Proffered Covenant